IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 934 OF 2007

Cormorant Investments Pvt.Ltd..... Petitioner.

Versus

Dharmesh Soorappa Salian & Anr..... Respondents.

Mr. Haresh Mansukhani for the Petitioner.
Mr. A.K.Lulia for the Respondents.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard learned Counsel appearing for the parties.

2. Rule.

3. Mr. A. K. Lulia, learned Counsel appears and waives service for the respondents.

4. By consent, rule made returnable and heard forthwith.

5. The Interim Notice No. 383 of 2006 filed in R. A. E. Suit No. 983/1889 of 1997 has been made absolute and the said notice was taken out by the

defendants, the present occupants. By the impugned order dated 22nd November, 2006, the Issue No.4A framed on 23rd July, 2004 has been directed to be deleted and instead the following additional issue has been framed:

> "Whether the plaintiffs prove that they are the owners and landlords of the suit property and entitled to file the suit against the defendants"?

6. There is no dispute that the plaintiff sought amendment in their plaint by adding paragraph 8A to the plaint and the same was allowed by the trial Court and consequently the notice was taken out for adding the issue as has been quoted above. When the defendants have challenged the title of the plaintiff as being the owners, it is necessary that the same issue is framed and decided by allowing the parties to lead evidence when such an issue, goes to the root of the matter. However, deletion of issue No.4A framed on 23rd July, 2004 by the impugned order has no justification. Issue No.4A reads as under:

> "Does the Plaintiff proves that Defendants have denied their title for the suit

premises and liable for decree of possession under Section 111 of Transfer of Property Act "?

7. There may be some justification to believe that Issue No.4A and the added issue by the impugned order are complementary to each other. However, the deletion of the issue framed earlier on 23rd July, 2004 is not justified. The said additional Issue No.4A is required to be continued and the plaintiff has the burden to prove the same and thereafter the added issue will have to be considered and decided.

8. Hence the writ petition is partly allowed. The impugned order is quashed and set aside and the Rule is made absolute as under:

Issue No.4A framed vide order dated 23rd July, 2004 will be retained and the additional Issue as framed as above shall be treated as Issue No.4AA and all the Issues shall be tried together.

Sd/-

(B. H. MARLAPALLE, J.)